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EXAMINER

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ART UNIT

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3769

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Art Unit: 3769

Newly submitted claims 39-48, 52-59, 76, and 78-80 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: original claims 39-48, 52-59, 76, and 78-80 were drawn to a device for tissue removal, this is distinct from the currently claimed method, because the device could be used for a substantially different method, e.g. aspirating tissue. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 39-48, 52-59, 76, and 78-80 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on June 18, 2009, amending all claims so as to not read on the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the method is distinct from the device as set forth above. Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

/david shay/

Primary Examiner, Art Unit 3769